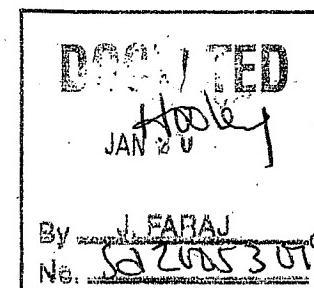


EXHIBIT 4

1 Arcadio Acuna # C-43165
 2 PBJP-SHU LFD 3-209
 3 P.O. Box 7500
 4 Crescent City, CA 95532



5
6
7 In Pro Per
 8
 9
 10 Superior Court of California
 11 County of Del Norte
 12
 13 In re: No. HCPB-05-5424
 14 Arcadio Acuna # C-43165
 15 Reply to Informal Response
 16 to Petition for Writ of
 17 Habeas Corpus
 18
 19
 20
 21 Petitioner, Arcadio Acuna, respectfully submits this
 22 Reply to Respondent's Informal Response to Petition for
 23 Writ of Habeas Corpus received Jan. 03, 2006, and hereby
 24 desires that Respondent has made a showing that due process
 25 was afforded when Petitioner was validated as a member
 26 of a prison gang, and asserts that Respondent has failed
 27 to set forth sufficient facts or law to show why the
 28 requested relief should not be granted. Petitioner

1 asserts that the Informal Response contains grave errors
 2 of both fact and law, specifically addressed as follows:
 3

4 I. The Gang Validation Process (Response, II-1-2)

5 while correctly noting that there is a process for
 6 validating inmates as prison gang members or associates,
 7 that Petitioner has a protected liberty interest to remain
 8 free from confinement in administrative segregation, and that
 9 in order to have been validated as a member Petitioner
 10 had to have been shown to have been accepted into member-
 11 ship based on three independent source items indicative
 12 of actual membership (Response, II-1-2), Respondent fails
 13 to indicate how the information relied on in this case
 14 establishes membership in accordance with the criteria
 15 set forth in the Code of Regulations, Table 15, § 3378 (c)(3).
 16

17 Petitioner herein reasserts that the information relied
 18 on in the validation is false, and its use did not
 19 conform to the express requirements of due process as
 20 identified by the Courts. (see generally Castillo v. Alameda,
 21 et. al. no. c-94-2847 (N.D. Cal. 2003); also In re Ruben Ruiz
 22 Del Norte Superior Court no. HCPB-08-5110 [acknowledging
 23 that more than the limited due process concerning initial
 24 segregation detailed in Hewitt v. Hines (1983) 439 U.S. 460,
 25 it required in cases involving inmates held in PBSP-5HII
 26 (or indeterminate terms of segregation]).

27 Moreover, Respondent's allegation that PBSP-5HII inmates
 28

1 serving in determinate terms of segregation are considered
 2 for release to the general population every 180-days by
 3 Classification Committees (Response, p. 2), and that if
 4 committees determine any questions exist as to inmates
 5 gang status the inmate will be referred to IGI, LEM,
 6 SSM or DRB for review is incorrect, as it is well
 7 established and recognized by this court that these
 8 classification committees are not empowered to overturn
 9 a gang validation once it has been put in place by
 10 the LEM, as a matter of policy and practice do
 11 not forward questionable evidence to gang officials,
 12 and are simply meaningless administrative gestures car-
 13 ried out to generate documentation rubber stamping
 14 previous decisions (see Petition, Ground 3.)
 15
 16 2.) Petitioner's Validation (Response, pp. 3-4)
 17

19 To begin with, Petitioner submits that by the Informal
 20 Response and attached Exhibit-3, Respondent concedes
 21 that at least as to one of the three source items relied
 22 on in the validation process Petitioner was not given
 23 in any way shape or form notice as required by
 24 law. (See Exhibit-4, referencing confidential memo dated
 25 Sept. 21, 2000, as one of three source items relied on
 26 by the LEM). As such, this denial of due process
 27 unto itself renders the entire validation process unlawful.

But more importantly, Respondent is patently incorrect

1 is claiming that by an interview held on Dec. 18, 2003,
 2 due process was satisfied as notice was given and
 3 petitioner had an opportunity to challenge the evidence
 4 before the validation package was submitted to the LEIAC.
 5 Petitioner asserts that the interview fell far short of
 6 meeting the criteria set forth in the Code of Regulations
 7 and gives emphasis by the Curtillo decision is that the
 8 chrono dated Dec. 18, 2003, records only that Lt. Garcilazo
 9 may have made vague reference to "some information" he
 10 had supposedly obtained from two confidential sources
 11 but did not identify any specific conduct to which
 12 petitioner could have made a viable challenge to except
 13 to deny, as he did, any ~~engaging~~ involvement and put
 14 emphasis on his good conduct. The chrono also fails
 15 to record that Lt. Garcilazo threatened to send petitioner
 16 back to the SBU by any means necessary if he refused
 17 to become a prison informant.
 18

19 Furthermore, Respondent concedes in the Response that the
 20 confidential information relied on is the validation process
 21 was not disclosed in accordance with departmental regula-
 22 tions via CAC-1020 Disclosure Forms until 4-months after
 23 the validation decision had already been made. (Response,
 24 p. 4, Exhibit-9) A review of the record thus shows
 25 that only when petitioner finally became aware of
 26 the nature of the charges made against him by these
 27

1 disclosures was he able to mount a vigorous challenge
 2 to the information by filing 3 separate CDC-602 appeals
 3 on each of the different source items. (see Respondent's
 4 Exhibit-B, 11-7-15) These appeals reveal that prison
 5 officials, as Respondent, were unresponsive to the issues
 6 raised addressing the validity of the confidential informa-
 7 tions and have never attempted to show that a direct
 8 link exists, tying petitioner to verifiable acts of mis-
 9 conduct said to aid and abet, promote or further a
 10 gang, nor have they explained how the informa-
 11 tion establishes actual gang membership.
 12

13 In fact, serious due process concerns exist in that
 14 petitioner was guilty of committing the serious mis-
 15 conduct alleged by the informants, then by not reporting
 16 this misconduct in CDC-115:LRH as required by the
 17 Code of Regulations, Title 15, § 3312(a)(3), petitioner was
 18 denied the due process he would otherwise have been
 19 afforded pursuant to § 3315(c)-(g). This in turn
 20 allowed for false, unreliable and unproven charges to be
 21 relied on to validate petitioner as a gang member and impose
 22 an indefinite term of segregation based on that status.

23 Respondent in the Informal Response further alleges
 24 that after Petitioner was revalidated, but before he was
 25 returned to the SISU, he had notice and an opportunity
 26 to challenge his housing decision, correctly stating that

1 petitioner attended each of the committee hearings held
 2 at Culpepper State Prison, but there is correctly asserted
 3 that petitioner expressed no disagreement or asserted
 4 any challenges to his segregation at these hearings.
 5 In fact, petitioner vigorously challenged his validation
 6 at every opportunity and expressed to committee members
 7 the grave injustice he was being made to suffer. But, as
 8 is the practice of prison officials these challenges or
 9 comments were not recorded in any way, and the com-
 10 mittees made it clear they had no authority, or incli-
 11 nation to even question the validation once it was
 12 imposed by the LEM. (see petitioner, Ground 3)

Conclusion (Response, p.5)

16 petitioner denies that respondent ever made a showing
 17 sufficient to warrant denial and dismissal of the petition,
 18 and by this reply denies each and every other allegation
 19 made by respondent in the Informal Response not other-
 20 wise specifically addressed herein, submitting that, as
 21 based on all the papers and pleadings now before the court
 22 relevant to this action a prima facie showing has been
 23 made that he was denied due process in the initial
 24 validation process (labeling him a gang member, summar-
 25 ized as follows):

27 A. As conceded by respondent, petitioner was not given
 28 notice or an opportunity to challenge the information con-

1 lawed as confidential memo dated Sept. 21, 2000, before
2 it was submitted to the LEOA as one of three source
3 items;

4 B. Petthover was not given proper notice and an opportunity
5 to challenge the information contained in confidential
6 memo's dated Sept. 23, 2003, and Dec. 12, 2003, because
7 they were not disclosed via CDC-1030 Disclosure forms
8 until 4-months after the violations had already been
9 imposed by the LEOA, and that Lt. Garcielazo may
10 have made reference to some unspecified information
11 at the interview held on Dec. 18, 2003, was not sufficient
12 as a matter of law to satisfy due process requirements;
13 C. The confidential information relied on by defendant
14 does not establish Petthover has been accepted as
15 actual membership of a priod gang;
16 D. The confidential information relied on does not establish
17 a direct link to any specific and verifiable act
18 of misconduct showing Petthover aided and abetted,
19 promoted or acted in furtherance of a priod gang; and
20 E. By not reporting the alleged serious misconduct made
21 reference to in the three source items in CDC-115
22 RVR's as required by the Code of Regulations, Petthover
23 was denied due process of law and he was illegally
24 punished for false, unproven accusations.

25 In closing, Petthover submits that a review of
26
27
28

1 his prison file clearly shows he is not, and has never
2 been a member of a prison gang, and as a 54 yr old
3 prisoner who has been continuously confined for more
4 than 20 yrs. has reasonably conformed to behavioral
5 expectations, has never in those 20 yrs. received a
6 AVR for gang misconduct, has diligently performed
7 his duties when assigned to numerous prison jobs, and
8 has been, and continues to be rewarded with classifica-
9 tion score reductions for his good conduct. Based
10 on what he was told by Lt. Garcilazo petitioner
11 asserts he was arbitrarily and without good cause
12 labeled a gang member and returned to the ISMU
13 because he refused to become a prison informant.

14 I declare under penalty of perjury that all of
15 the foregoing statement is true and correct, and
16 was executed on this 5th day of Jan., 2006, in
17 Crescent City, California.

21 Respectfully Submitted,
22
23
24

25 Arcadio Aceves
26
27
28

Arcadio Aceves # C-43165
Petitioner, In Pro Per

PROOF OF SERVICE BY MAIL

(C.C.P. section 101a #2015.5; 20 U.S.C. section 1746)

I, Arcadio Acuna, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below entitled action.

My Address is: P.O. Box 7500; Crescent City, CA 95531.

On the 5th day of Jan., in the year of 2006, I served the following documents: (set forth the exact title of documents served)

Reply to Informed Response to Petition for writ
of Habeas Corpus

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United States mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

Pamela A. Hoblog, Dly. Attorney General

Department of Justice

1300 "I" Street, Ste 125

Sacramento, CA

94244-2980

I declare under penalty of perjury that the foregoing is true and correct.

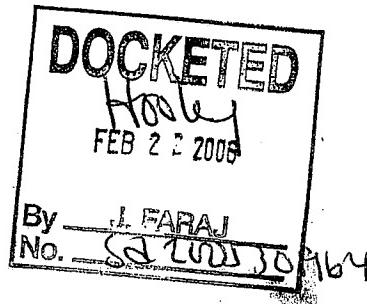
Dated this 5th day of Jan., 2006.

Signed:

Arcadio Acuna

(Declarant Signature)

EXHIBIT 5



FILED

FEB 14 2006

SUPERIOR COURT OF CALIFORNIA
COUNTY OF DEL NORTE

E. ESPARZA

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

IN RE:

ARCADIO ACUÑA,
C-43165,

Petitioner,

On Habeas Corpus.

CASE NO.: HCPB05-5242

ORDER TO SHOW CAUSE RE WRIT
OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus and finds a sufficient showing has been made to require a formal response by Respondent. Accordingly, Respondent shall have thirty (30) days to show why relief should not be granted. Within thirty (30) days after service and filing of the Return, Petitioner may serve on Respondent and file a Denial. Failure to file a Denial may be deemed by the Court to be an admission of the allegations of the Return.

Apparently it is not disputed that petitioner was not provided with copies of the CDC 1030 Confidential Information Disclosure forms until after the IGI had apparently prepared and sent off the validation package to the LEIU. The forms are utilized to provide inmates with information so that they can respond to the Institutional Gang Investigator (IGI). Failure to provide the 1030 forms prior to validation would appear to be in violation of the established due process. It is

1 argued by the Attorney General that the petitioner was subsequently provided the
2 forms prior to an ICC review, which compensates for the failure to disclose the
3 forms earlier. In light of the fact that the ICC is required to keep inmates in SHU
4 once they have been validated, it is not clear to the Court how providing the
5 documents late complies with minimum due process.

6 The Court is also deeply concerned about the sufficiency of the evidence
7 supporting the validation after *in camera* review of the documents at the informal
8 response stage. Exhibit "Y" gives detailed information about alleged gang activity
9 by the petitioner as well as grounds for the memo writer to believe that the
10 reliability of the confidential source was established. However, validation requires
11 three independent sources and the Court is not convinced that the legal
12 requirements have been met.

13 Exhibit "X," the confidential memorandum dated December 12, 2003,
14 indicates that petitioner may have been told something about gang activities by
15 another "inactive" associate of the gang. The Return should address whether this is
16 sufficient to constitute an "independent source item of documentation indicative of
17 association with validated gang members or associates." The source of the
18 information appears to be speculating that petitioner had been told something by
19 the other inactive gang member. It is unclear how that speculation can be
20 considered to be reliable evidence.

21 Exhibit "Z," the September 21, 2000 confidential memorandum, was
22 referenced in a corresponding CDC 1030 confidential disclosure form. The 1030
23 form that was provided to petitioner appears to be incorrect in that it indicates the
24 "source incriminated himself-herself in criminal activity at the time of providing the
25 information." No other statement of the reliability is given in the CDC 1030 nor the
26 memorandum itself. Nor is it clear to the Court how this evidence establishes that
27

1 the petitioner is involved "periodically or regularly" with associates of the gang. See
2 15 C.C.R. 3378 (c)(4).

3 George Mavris, Attorney at Law, is appointed to represent the petitioner.
4 His address is 1 Point St. George, Crescent City, CA 95531. His telephone number
5 is 707-464-1418.

6 DATED: FEB 13 2006



7
8 WILLIAM H. FOLLETT
9 Judge of the Superior Court
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PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P)

I am a citizen of the United States and a resident of the County of Del Norte. I am over the age of eighteen (18) years and am not a party to the entitled action; my business address is 450 H St, Crescent City California 95531.

On Tuesday, February 14, 2006, I served a copy of the ORDER TO SHOW CAUSE RE WRIT OF HABEAS CORPUS, FILED 2/14/06 by depositing a true copy in the United States mail in Crescent City, California, in a sealed envelope with postage prepaid, addressed as follows:

ARCADIO ACUÑA, C-43165
C/O Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Harlan Watkins
Litigation Department
P.O. Box 7500
Crescent City, CA 95531

Pamela B. Hooley
Deputy Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

George Mavris
Attorney at Law
[Courthouse Mailbox # 11]

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that it was executed at Crescent City, California this date.

DATED: February 14, 2006



Esperanza Esparza
Judicial Assistant